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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, et al.,

Petitioners,

vs.

GRACIE ROBINSON and JUANITA HAGER, etc.,

Respondents.

On Writ of Certiorari
To The United States Court of Appeals
For The District of Columbia Circuit

BRIEF OF NATIONAL BLACK LUNG ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE[1/]

Amicus Curiae, National Black Lung Association, is a non-profit organization

1/ Pursuant to Supreme Court Rule 36, written consent to the filing of this Brief has been obtained from counsel for all parties, and the letters of consent are being filed with the clerk of the Court.

formed in 1969. The association's membership is composed of retired, disabled and working coal miners, their wives and widows. The organization is spread throughout seven states -- West Virginia, Virginia, Tennessee, Ohio, Illinois, Pennsylvania, and Kentucky.

A substantial portion of the membership of the National Black Lung Association, at least one-third, are women. Many of these women, mostly widows of coal miners, will be directly affected by this case as they are persons now excluded from benefits by the Petitioners' rules under attack in this litigation.

Further, one of the major goals of the association is the dissemination of information and the provision of education to its membership with regard to health and pension benefits from the United Mine Workers benefit plans. In this regard,

Amicus is particularly concerned that all its members, including widows and children, receive the benefits to which they are legally entitled. Amicus believes that this Court must affirm the Court of Appeals' decision in order to insure its members their rightful benefits and to prohibit collective bargaining parties from further eroding, without check, the limited security now provided by Petitioners.

Amicus also notes that their attorneys herein from the National Senior Citizens Law Center (NSCLC) are experienced in private pension matters, particularly pension plans governed by the Taft-Hartley Act, 29 U.S.C. § 186(c)(5). NSCLC, a Legal Services Corporation program, has represented other Amicus Curiae before this Court in both International Brotherhood of Teamsters v. Daniel, 439 U.S. 55 (1979);

and Alessi v. Raybestos-Manhattan, Inc., --- U.S. ---, 101 S.Ct. 1895 (1981). Further, NSCLC has represented numerous workers who have challenged under section 302(c)(5) of the Taft-Hartley Act their inexplicable loss of pension benefits (see, for example, Ponce v. Construction Laborers Pension Trust for Southern California, 628 F.2d 537 (9th Cir. 1980)). Thus, Amicus' attorneys are intimately familiar with the workings of the Taft-Hartley Act as applied to benefit plans.

SUMMARY OF ARGUMENT

1. Petitioners and their supporters have conceded three key points. First, the rule challenged in this case is arbitrary and caprivious. Secondly, were this rule the product of trustees rather than collective bargaining parties, it would

be subject to judicial review. Thirdly, a limited classification of rules developed by collective bargainers are subject to review under §302(c)(5).

2. Defendants rest their argument on erroneous assumptions. They contend that the common law of trust and fiduciaries has provided the sole basis for judicial review of eligibility conditions; §302(c)(5) has not been the source. Consequently, they urge, there is no basis for review of alleged structural violations, such as arbitrary eligibility conditions, which are developed by the collective bargainers.

The initial assumption misreads decisions of the District of Columbia Court of Appeals. That court has long recognized the import of §302(c)(5), and the authorization of review it extends to the federal courts. Moreover, the other federal

circuits have repeatedly recognized that §302(c)(5) provides for review of structural violations. Contrary to defendants' assumption, the courts generally agree that "it is not the prudence of the plan's administration which is at issue, but the fairness of its basic structure." Knauss v. Gorman, 583 F.2d 82, 86 (3d Cir. 1978).

By definition, eligibility conditions provide the structure through which employees obtain their benefits. This is so whether the trustees or the collective bargainers develop those conditions. Congress intended that §302(c)(5) would provide a mechanism by which the intended beneficiaries of these trusts could protect their interests. Consequently, regardless of who develops the eligibility rules, they form the structure under which the benefits must be sought. And when that structure

is defective, the beneficiaries can challenge it.

3. The reliance of petitioners and amici on standard trust law for their contention that the settlors (collective bargaining parties) have virtually unlimited discretion is seriously in error. Taft-Hartley trusts under §302(c) are of a considerably different nature. First, the trust funds are not provided by the settlors, but are contributed on behalf of the employees -- the beneficiaries of the trust -- in payment for their labor. Thus, the settlors do not possess the nearly unlimited discretion to which defendants ascribe them; beneficiaries must be able to protect their entitlement through court review.

Secondly, the beneficiaries of a Taft-Hartley trust are fluid. They are

not explicitly named in the trust document, and are, in fact, in competition for benefits. To ensure that the most deserving of them obtain the trust benefits, the rules must be reasonably structured; Congress has guaranteed that the rules can be reviewed to accomplish this goal.

This Court recognized in NLRB v. Amax Coal Co., 101 S.Ct. 2789 (1981), that Congress intended that conditions of §302(c) trusts should not be subject to the same review standards of other collectively bargained decisions. The purpose of §302(c)(5) was to remove review of trust fund rules from the collective bargaining atmosphere and place them under fiduciary standards where the primary duty is to the beneficiaries.

4. Contrary to defendants' contentions,

Congress' enactment of ERISA does not demonstrate a desire to eliminate general federal court review over §302 trust eligibility rules. Congress intentionally decided to leave §302(c)(5) intact after ERISA. 29 U.S.C. §1144(d). Further, Congress reenacted the fiduciary duty principles of §302(c)(5) in 29 U.S.C. § 1104(a)(1). NLRB v. Amax Coal, supra. Therefore ERISA demonstrates a continued congressional intent to have all rules of §302 benefit funds reviewed under fiduciary duty principles.

5. Even if defendant' extreme position that eligibility conditions developed in collective bargaining are unreviewable is accepted, the trustees' action in applying those rules is still challengeable. The trustees owe an independent duty to the beneficiaries, and that duty

is not altered by the collective bargaining process. Amax Coal, supra. The trustees must independently examine the eligibility conditions established by the collective bargainers, and are not bound to apply those rules. Toensing v. Brown, 528 F.2d 69, 72 (9th Cir. 1975). Where, as in this instance, the eligibility conditions are unreasonable, the trustees should not enforce them; to do so violates their obligations under §302 (c)(5).

ARGUMENT

I. THE TRUSTEES AND AMICI CONCEDE THAT THE CHALLENGED RULE IS ARBITRARY AND CAPRICIOUS, BUT THEY DEFEND IT ON THE GROUNDS THAT IT IS UNREVIEWABLE AS THE PRODUCT OF COLLECTIVE BARGAINING.

The arguments of the Trustees and the amici construct a framework which assumes that the rule held invalid by the Court of Appeals is arbitrary and capricious, but which shields that rule from judicial review on the grounds that it was the product of collective bargaining. Nowhere in their briefs do they suggest or imply that the rule excluding the plaintiff class from coverage is reasonable. Indeed, the questions presented by the defendants implicitly admit that this is the case, for defendants do not alternatively urge that if the rule is subject to review, it is defensible. Brief for Petitioners (hereinafter, "Pet. Br."), at i.

The AFL-CIO, in particular, leaves no doubt as to the single focus of the case. "The only question presented in this case is whether § 302(c)(5) gives rise to the restrictions on collective bargaining eligibility rules found by the court below." Brief of AFL-CIO as Amicus Curiae in Support of Petitioners (hereinafter, "AFL-CIO Br."), at 5 n.2. By necessary implication, if that is the sole question for review, then the Trustees and their supporters have conceded the result of judicial review. Moreover, the AFL-CIO states boldly that "settlors . . . are not bound by principles of fairness or reasonableness. . .", id., at 7, and elaborates the broad discretion which settlors purportedly have, a discretion only marginally limited in the view of the AFL-CIO. It is the AFL-CIO's view that regardless of the arbitrariness of the rule, it cannot be judged by principles of

fairness.

The corollary to this concession is also accepted by the defendants and the amici. This is that if the challenged rule were the product of the trustees, rather than the collective bargainers, it would be reviewable in federal court under an arbitrary and capricious standard. The defendants do not accept § 302(c)(5) as the source of this review, but they do recognize "that the discretionary acts of fiduciaries [the trustees] are subject to judicial review." Pet. Br., at 11; see also id, at 20. Indeed, the unanimity of opinion in the federal appellate courts recognizing the right of judicial review over certain actions of pension plan trustees precludes them from arguing to the contrary. See cases cited in Pet. Br., at 23.

In addition, defendants and the amici also concede that at least some actions of

collective bargainers are subject to judicial review under § 302(c)(5) where the trust provisions are illegal. The AFL-CIO notes: "Unless a trust or provision thereof involves the commission of an illegal act by the trustee or is against some clear public policy, the trust purposes established by the settlor are deemed valid." AFL-CIO Br., at 6. The trust cannot be created for "illegal" purposes. Ibid. While the AFL-CIO views this standard as providing "virtually unlimited discretion" for the settlors, id., at 6-7, it remains a recognition that the collective bargainers are not totally free from judicial review.[1/]

1/ The AFL-CIO would apparently limit court review of collective bargainers' activities under § 302(c)(5) to eligibility conditions permitting benefits for other than employees, their families or dependents. AFL-CIO Br., at 13-14. Eligibility conditions established by the

Defendants agree: "[T]he authority of the collective bargaining parties under the NLRA is not absolute. . . . A collective bargaining agreement may be reviewed and modified if it violates the Constitution, or a federal statute, or some clearly expressed public policy derived therefrom." Pet. Br., at 15 (citations omitted). Along with the AFL-CIO, therefore, the defendants recognize that § 302(c)(5) does provide an exception to the generally accepted freedom of the collective bargaining process established in the Wagner Act. Even under

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Footnote 1 continued.

collective bargaining parties which limit payments only to those classifications, regardless of how unfair or arbitrary, are apparently not, according to the AFL-CIO, subject to review. Still, even this strict interpretation admits, however grudgingly, that collective bargainers are subject to review under § 302(c)(5) and that that section limits the otherwise broad reach of the Wagner Act.

defendants' narrow viewpoint, that Act does not offer collective bargainers a completely free hand; they cannot establish an illegal trust.[2/]

At the outset, then, there is agreement that the challenged rule is arbitrary and capricious, that the federal courts could review it if the trustees had promulgated it, and that § 302(c)(5) permits federal court review of some actions of the collective bargainers. Where the parties disagree is in defendants' view that, except for certain unspecified and undefineable illegal actions, the collective bargaining parties are not restrained by § 302(c)(5) from agreeing on virtually

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2/ Thus, for instance, collectively bargained eligibility conditions establishing a racially discriminatory plan would be subject to review and injunctive relief, as defendants concede. Pet. Br., at 15-16.

any eligibility rules. In plain terms, the essence of the argument of defendants and their supporters is that the shift of responsibility for the establishment of eligibility conditions to the collective bargainers from the trustees insulates blatantly arbitrary and capricious rules from judicial review. It should be apparent that if this view is upheld, the unanimous and long-standing position of the federal courts, that unreasonable eligibility conditions can be reviewed and enjoined, will be easily and regularly thwarted merely by the action of the collective bargaining parties in establishing eligibility conditions.[3/]

3/ An excellent example of the abuses which this would encourage is suggested by Blankenship v. Boyle, 329 F.Supp. 1089 (D.D.C. 1971), later opinion, 337 F.Supp. 296 (D.D.C. 1972), aff'd without opinion 511 F.2d 447 (D.C.Cir. 1975). One of the issues of that case was the hasty and

II. DETERMINATION OF THE ELIGIBILITY CONDITIONS BY THE COLLECTIVE BARGAINING PARTIES DOES NOT INSULATE THOSE CONDITION FROM REVIEW.

Defendants and amici depend for their position on two related assumptions. First,

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Footnote 3 continued.

ill-advised increase in pension benefits under the prodding of the union trustee Boyle, who was seeking re-election to the union presidency. Without regard to the actuarial realities of such an action, the trustees voted for the increase, in response to Boyle's insistence and conniving. 329 F.Supp., at 1108-1110. In practice, the action was similar to that which collective bargainers take, as Judge Gesell found: "[T]he increase was handled as an arrangement between labor and management with little recognition of its fiscal and fiduciary aspects." Id., at 1109. Yet under defendants' analysis in this case, the identical action would have been formally undertaken in the collective bargaining process, and despite the disastrous consequences of raising benefits in violation of a fund's actuarial soundess, the courts would be powerless to prevent the inevitable outcome. The shroud of the collective bargaining process, as defendants urge, would operate to insulate even the most egregious and unreasonable acts from judicial review.

it is their contention that the numerous federal courts which have held invalid and enjoined eligibility conditions derive their authority from some source other than section 320(c)(5). These courts, according to defendants, have not been evaluating "structural violations", but, rather, the activities of the trustees in their roles as fiduciaries. Whatever actions the trustees took, according to defendants, was subject to review under federal common law theories on the fiduciary obligations of trustees; that may have encompassed eligibility conditions, but it did not, as a matter of law, involve evaluation of structural framework under § 302(c)(5).

Pursuant to that analysis, defendants are free to reach their ultimate conclusion: that, as a general matter, the adoption of eligibility conditions per se cannot give

rise to structural violations.[4/] Consequently, the federal courts cannot review eligibility conditions adopted by collective bargainers, since, defendants urge, there is no basis for review of eligibility conditions themselves under § 302(c)(5) and the actions of the collective bargaining parties are not subject to review under federal common law standards applicable to fiduciaries, the trustees. Defendants are incorrect, however, on both assumptions: federal courts do have authority

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4/ As was noted above, supra, at 13-16, defendants acknowledge that limited classifications of eligibility conditions are subject to review. These are those which, for instance, might be premised on racial grounds, thus violating public policy, or which would provide for the payment of benefits to other than the employees, their families, and dependents. Defendants contend, however, that aside from these kinds of eligibility conditions, courts have no power under § 302(c)(5) to evaluate them as structural violations.

under § 302(c)(5) to review alleged structural violations, and since eligibility conditions are such violations, they are reviewable.

Defendants urge that the long-standing and consistent recognition by the federal appellate courts that § 302(c)(5) provides the basis for evaluating alleged structural defects is inaccurately premised on early mineworkers' cases emanating from the District of Columbia Court of Appeals. Pet. Br., at 20-24. That contention, however, misapprehends both the decisions of the District of Columbia Court of Appeals and those of the numerous other circuit courts which have considered the issue.

First, while it is true that the District of Columbia Court of Appeals, following the lead of the district

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court,[5/] cited established equitable principles regarding trusts as offering a basis for analyzing the actions of the trustees, this emphasis was largely due to that court's peculiar jurisdictional position. Unlike other federal courts, the District of Columbia court did not need to rely on § 302(c)(5) for its cause of action and § 302(e) for its jurisdiction. The court there was not concerned whether federal or "state" law was applicable, since it had the power of review in any event. Accord, Cuff v. Gleason, 515 F.2d 127, 129 (2d Cir. 1975); Mosley v. Nat'l Maritime Union Pension and Welfare Plan, 438 F.Supp. 413, 420 n.6 (E.D.N.Y. 1977). Thus, unlike federal courts outside of the

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5/ See, e.g., Hobbs v. Lewis, 159 F.Supp. 282 (D.D.C. 1958); Kennet v. United Mine Workers of America, 183 F.Supp. 315, 317 (D.D.C. 1960).

District of Columbia, the courts there had no primary jurisdictional need to evaluate whether § 302(c) provided a basis for review. See Cuff, 515 F.2d, at 128.

In light of the peculiar jurisdictional position of the courts in the District of Columbia, it is inaccurate to pretend that the Court of Appeals there ignored § 302(c)(5) as a source for review of structural violations. While it is true that that court did not emphasize that section and that it cited the general power to review trustees' action in Roark v. Lewis, 401 F.2d 425, 427 (D.C. Cir. 1968), as defendants observe, Pet. Br., at 21, it is also true that the court was aware of § 302(c) and its significance. Thus, in Roark v. Lewis, supra, 401 F.2d, at 424 n.3, it cited Moglia v. Geoghegan, 267 F.Supp. 641, 645 (S.D.N.Y. 1967), aff'd

403 F.2d 110 (2d Cir. 1968), cert. denied 394 U.S. 919 (1969). The Moglia district court decision indicated that eligibility conditions could be evaluated, though in a limited manner, pursuant to the statute. 267 F.Supp., at 645. The District of Columbia Court of Appeals chose not to explicity embrace the analysis of that court, since an alternative and simpler approach was available, but it nonetheless recognized the existence of the statute as a source of review over eligibility conditions.

Similar, in Kiser v. Huge, 517 F.2d 1237, 1249 (D.C.Cir. 1974), the court cited § 302(c)(5) as the source of authority for the evaluation of an eligibility condition in a previous case. And in that previous case, Roark v. Boyle, 439 F.2d 497, 503 (D.C.Cir. 1970), the court had observed

that "[t]he purpose of section 302 would be more fully carried out by the use of eligibility requirements geared to applicant's contribution histories." That analysis thus suggests that section as the framework by which eligibility conditions are to be judged.

Likewise, in Pete v. United Mine Workers of America Welfare and Retirement Fund of 1950, 517 F.2d 1275, 1286 (D.C. Cir. 1975) (en banc), the court viewed § 302(c) as establishing the guidelines by which eligibility conditions could be evaluated:

> "The Taft-Hartley Act presumed that management and labor would agree on pension eligibility requirements. But where, as here, the eligibility requirements thus produced are unenforceable as written, the courts do not jettison the pension. We must take into account . . . the broad purposes of the pension plan in its statutory setting. . . ."

It is thus inaccurate to characterize the actions of the District of Columbia Court of Appeals as resting entirely on the common law of trusts and fiduciaries. That court was aware of the features of section 302(c)(5), and considered eligibility conditions in light of the requirements of that section. Its discussions "are based on the interpretation . . . of the substantive requirements of § 302(c)(5)." Mosley, supra, 438 F.Supp., at 420 n.6.

As has been noted, the other federal courts did not have the jurisdictional freedom of the District of Columbia courts. They were thus forced to deal specifically with the meaning and effect of § 302(c)(5), since their review powers were dependent on it providing a cause of action. These courts have left little doubt that the authority to review eligibility conditions derives from the authority to correct alleged

structural violations.

In Johnson v. Botica, 537 F.2d 930 (7th Cir. 1976), the Seventh Circuit carefully analyzed the nature of review provided by § 302(c)(5). Contrary to defendants' apparent position that any discretionary action of the trustees is subject to review, that court recognized that § 302(c)(5) carefully circumscribed the scope of review, limiting it to structural defects:

> "The courts have consistently recognized that Congress did not intend to burden the courts with claims as to whether a pension benefit was correctly or incorrectly denied, but the vast majority of courts have also held that jurisdiction at least extends to deciding whether a pension plan is arbitrary, capricious, or in some way contrary to the sole and exclusive benefit of employees. . . . Even those courts which have opted for a narrower reading of § 302(e) have recognized the viability of the structural defect test."

537 F.2d, at 933-934 (citations omitted).

See also, e.g., Lugo v. Employees Retirement Fund, 529 F.2d 251, 254-256 (2d Cir. 1976), cert. denied 426 U.S. 907 (1976); Bowers v. Moreno, 520 F.2d 843, 845-856 (1st Cir. 1975); Alvares v. Erickson, 514 F.2d 156, 164-166 (9th Cir. 1975), cert. denied 423 U.S. 874 (1975). As the Ninth Circuit succinctly observed: "The sole-and-exclusive-benefit standard limits the discretion of the trustees of a pension plan." Sailer v. Retirement Fund Trust, 599 F.2d 913, 914 (1979).[5/]

5/ In their effort to support their strict reading of §302(c), defendants cite one Ninth Circuit case, Turner v. Local Union No. 302, 604 F.2d 1219, 1228 (9th Cir. 1979), for the proposition that that court "does not regard an eligibility rule as a violation of the 'sole and exclusive benefit' provision unless the rule causes the diversion of trust assets to someone other than an employee." Pet. Br., at 23. In light of numerous Ninth Circuit cases both before and after the Turner decision

Similarly, in Knauss v. Gorman, 583 F.2d 82 (3d Cir. 1978), the Third Circuit recapitulated the history of the discussion of § 302(c)(5) and structural violations. It restated its previous determination that

> "'a federal court does have jurisdiction under (§ 302(e)) to enforce a trust fund's compliance with the statutory standards set forth in subsection (c)(5) by eliminating those offensive features in the structure or the operation of the trust that would cause it to qualify for a (c)(5) exception.'" 583 F.2d, at

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Footnote 5 continued.

which recognize that, as a general rule, eligibility conditions are structural violations subject to review under § 302(c), defendants' analysis of the Ninth Circuit's position is unsupportable. See, e.g., Music v. Western Conference of Teamsters, 660 F.2d 400, 402-403 (9th Cir. 1981); Ponce v. Construction Laborers Pension Trust, 628 F.2d 537, 541-542 (9th Cir. 1980); Wilson v. Board of Trustees, 564 F.2d 1299, 1300 (9th Cir. 1977); Burroughs v. Board of Trustees, 542 F.2d 1128, 1130 (9th Cir. 1976), cert. denied 429 U.S. 1096 (1977).

85, quoting Associated Contractors v. Laborers Int'l Union, 559 F.2d 222, 225 (3d Cir. 1977).

It then considered the nature of a break-in-service rule, one of the more common rules employed by pension plans to determine eligibility: "[I]f the break-in-service clause does arbitrarily and without justification bar otherwise eligible workers from pension benefits, it constitutes a 'structural violation' cognizable under §302(e)...." 583 F.2d, at 86. Moreover, the Third Circuit confirmed that this was the standard approach: "Other courts have likewise adopted the position that 'structural violations' may be remedied under §302(e)." Id., at 86 n.9.

The Knauss decision also provides a comprehensive explanation as to the precise reach of the review standard under §302(c)(5) and the limited approach which it

requires courts to take. This analysis provides a concise explanation as to the relationship between the "sole and exclusive benefit" language and the authority of the courts to guarantee that the structure of pension plans does not arbitrarily exclude from coverage individuals deserving of benefits:

> "Congress did not necessarily intend §302(e) as a conduit to carry to the federal courts every claim for benefits denied by a §302(c)(5) pension fund. Day-to-day discretionary decisions by the administrators of funds are not subject to continuous audit by federal courts. However, where a settled requirement capriciously excludes employees from benefits, it is not the prudence of the plan's administration which is at issue, but the fairness of its basic structure. Such an exclusion constitutes a failure to conform to the 'sole and exclusive benefit' requirement, and thus may be reviewed in the federal courts without doing violence to the Congressional intent." Id., at 86 (emphasis supplied); see also, e.g., Ponce, 628 F.2d, at 541-542.

The federal courts have thus repeatedly and consistently recognized that §302 provides the authority for review of pension eligibility conditions. The authority is not a broad-based right to evaluate every aspect of a pension plan and the actions of its administrators, but is, instead, a limited authority to ensure that the structure of the plan does not arbitrarily deny to the explicitly named beneficiaries of the trust the benefits to which they are entitled and on whose behalf contributions have been made. The great majority of cases are explicitly in accord. Those few which do not are either from the District of Columbia Court of Appeals, where the distinction between federal and state authority is blurred, or are diversity cases in which the courts could turn to the broader standards

provided by the common law of trusts.[6/]

Overwhelming authority, therefore, recognizes that the federal courts possess the limited power to review structural violations in order to ensure that the requirements of §302(c)(5) are satisfied. Eligibility conditions, by their very nature, describe the structure by which pension benefits are distributed. The courts not only view §302(c)(5) as permitting review of alleged structural defects, but recognize that those are the only aspects of jointly-administered pension plans that the federal courts can review under the Taft-Hartley Act. That Act was not intended to establish the federal judiciary

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6/ See, e.g., Beam v. Int'l Organization of Masters, Mates & Pilots, 511 F. 2d 975, 978-979 (2d Cir. 1975); Lee v. Nesbitt, 453 F.2d 1309, 1310-1311 (9th Cir. 1972).

as a watchdog of trustees' actions, but was structured to guarantee that benefits were dispensed pursuant to a framework which was for the "sole and exclusive benefit" of the employees and their families.

The legislative history of §302(c) also repeatedly supports plaintiffs' position that Congress intended the beneficiaries to have the right to seek judicial review when funds were improperly disbursed. Senator Taft recognized that union officials should not have a free hand in reaching agreements on how to employ the funds:

> "[T]he purpose of the provision is that the welfare fund shall be a perfectly definite fund, that its purposes shall be stated so that each employee can know what he is entitled to, can go to court and enforce his rights in the fund ....
>
> "[The funds] should be regulated by the Federal Government ....

> They should not be subject to the arbitrary discretion of the union leaders, the very ones who are making the agreements and who are making the demands for the particular funds, whether the employees want them or not." 93 Cong. Rec. 4876 (1947), reprinted in 2 Leg.Hist. LMRA 1311 (1948).

Senator Ball repeatedly states that the purpose of the provision was to ensure that the benefits were not arbitrarily misdirected and that judicial review was available to guarantee this result.

> "[T]here is the exception to cover so-called welfare funds. All it requires is ... that it shall be in the nature of a trust fund, so that the employees receiving benefits from it will have a right to go into court to protect their interest in such benefits ...." 93 Cong. Rec. 4805 (1947), reprinted in 2 Leg.His. LMRA 1304 (1948).

A few days later he observed "that it shall be in the nature of a trust fund so that the employees cannot be arbitrarily deprived of the benefits .... [A]ll that

provision really does is to protect the rights of employees to benefits out of these funds which are created by their own labor." 93 Cong.Rec. 5147 (1947), reprinted in 2 Leg.Hist. LMRA 1498 (1948).

The proponents of the legislation thus intended to recognize that funds had been improperly administered before and that the only way to ensure that the intended beneficiaries received their benefits was to provide judicial review. Defendants' position, however, would preclude courts from evaluating the structural framework for paying benefits which was settled on during collective bargaining. There is no indication that Congress considered that process separate from the actions of the trustees. There is no indication that Congress believed, as the AFL-CIO argues, that the "settlors"

(collective bargainers) could agree to virtually any eligibility conditions, and have that agreement unchallengeable. To the contrary, Congress sought to "protect[ ] the rights of the employees whose toil creates these welfare funds." 93 Cong.Rec. A2378 (extension of remarks of Sen. Ball, 1947), reprinted in 2 Leg. His. LMRA 1524 (1948). That Congress would have developed a system which only protected employees' rights when the trustees acted, but not when the collective bargainers acted, contradicts both common sense and the repeated explanations of the provision's proponents. They intended that there would be judicial review to protect the rights of the employees; they did not restrict that review to the arbitrary actions of trustees only.

The statute itself does not distinguish between structures created by collective bargaining parties and those devised by trustees. For the most part, neither have the courts. The actions of the collective bargaining parties, however, are the paradigm of structural conduct. The framework they devise is intended to provide the basic outline in which the trustees must act. Consequently, if any action is appropriately the subject of review under the Taft-Hartley Act, it is that of the collective bargaining parties. As the Second Circuit has observed: "Section 302(c)(5) would not confer federal jurisdiction where an application of a trust pension plan rather than a collective bargaining agreement was involved." Cuff v. Gleason, supra, 515 F.2d, at 128 (emphasis

supplied); see also Beam v. Int'l Organization of Masters, Mates & Pilots, supra, 511 F.2d, at 978-979. In short, in its most basic form, the structure of a pension plan is the product of the collective bargaining parties. That product, therefore, can be evaluated under §302 (c)(5).

Defendants' position is untenable. They admit that certain structural violations, encompassing eligibility determinations, are impermissible and subject to review. But there is no basis on which to distinguish one kind of eligibility rule from another. The rule in this case is admittedly arbitrary. It could be reviewed and invalidated, as defendants concede, if the trustees had drafted it. It is part of the structure of the plan. That it is the product of the collective

bargainers, rather than the trustees, only enhances its position as an aspect of the structure. The courts have the power to review alleged structural violations, and the action of the court below was therefore appropriate.

III. THE UNIQUE CHARACTERISTICS OF § 302 TRUSTS REQUIRE THEIR ELIGIBILITY RULES TO BE REVIEWED UNDER THE FIDUCIARY DUTY TEST SET FORTH IN § 302(c)(5).

The defendants, and especially the AFL-CIO, rest much of their argument on an analogy between § 302 trusts and trusts at common law. (See AFL-CIO Br., at 6-11). In doing so, however, they have ignored the special features of Taft-Hartley trusts that not only render the analogy questionable, but also are the basis for Congress' decision to require review of those trusts under the principles set forth in § 302(c)(5).

A primary difference between § 302 trusts and those at common law is that the funds of the union trusts are not bestowed or bequeathed by the settlors. On the contrary, the money for the trust is generated by the work of the employees -- the beneficiaries of the trust. See

Inland Steel v. NLRB, 170 F.2d 247 (7th Cir. 1947), cert. denied 336 U.S. 960 (1948).

In essence, benefits from § 302 trusts are an "additional form of compensation", Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 245 (1980), in payment for the labor of the beneficiaries. Congress was particularly cognizant of this fact when it adopted § 302(c)(5).

Both Senators Ball and Taft, key sponsors of the amendment, repeatedly emphasized this special feature of § 302 trusts.

> "With respect to the amendment adopted by the Senate dealing with welfare funds, which under any kind of construction are contributed by the employer out of earnings by his employees . . . ." 93 Cong. Rec. 5147 (remarks of Sen. Ball, 1947), reprinted in 2 Leg. Hist. LMRA 1498 (1948).
>
> "In other words, this must be a trust fund . . . it is in

> trust for the employees, who, after all have earned the money", 93 Cong. Rec. 4876 (remarks of Sen. Taft, 1947), reprinted in 2 Leg. Hist. LMRA 1311 (1948).
>
> "[A]ll we seek to do by [§ 302(c)(5)] is to make sure that employees whose labor builds this fund and are really entitled to benefits under it shall receive the benefits; that it is a trust fund and that, if necessary, they can go into court and obtain the benefits to which they are entitled." 93 Cong. Rec. 4753 (remarks of Sen. Ball, 1947), reprinted in 2 Leg. Hist. LMRA (1948) 1322.7/

The import of the unique deferred compensation method for funding § 302 trusts is that all employees must be included as possible beneficiaries. The settlors of the trust cannot, as defendants and the AFL-CIO imply, simply exclude, ab initio, anyone they wish from beneficiary status.

7/ This court relied on this same legislative history in its recent decision in NLRB v. Amax Coal Co., supra, 101 S.Ct. at 2795.

Congress foreclosed that avenue by the adoption of § 302(c)(5).

Thus, union and management cannot structure the trust or establish eligibility rules which require all employees to contribute into the trust through their labor, but which prohibit certain employees from ever getting benefits. "[A]ll that provision [§ 302(c)(5)] really does is to protect the rights of employees to benefits out of these funds which are created by their own labor." 93 Cong. Rec. 5147 (remarks of Sen. Ball, 1947), reprinted in 2 Leg. Hist. LMRA 1498 (1948).

This raises the second critical factor distinguishing a § 302 trust from those at common law -- the fluidity of the beneficiaries. While the trust is for the benefit of all employees, not all employees will meet the conditions for payment of benefits. Beneficiaries are, in effect,

in competition for a limited piece of the fund's res. In addition, the particular beneficiaries who will ultimately receive benefits is always indeterminate. Thus, the beneficiaries of a § 302 trust are a fluid group of employees striving to become benefit recipients under the conditions for payment (i.e., eligibility rules).

Because of the existence of this unique class of beneficiaries, the only way to insure that § 302 trusts are properly structured, so as to avoid the improper funneling of money that underlies the enactment of § 302, is to provide that the rules which govern who receives benefits (i.e., the eligibility conditions) be reasonable. Cosequently, Congress decided that the rules of competition, the crucial structure of the trust, must not be unfair, arbitrary, or capricious, and that the rules be subject to judicial review no

matter who promulgates them.

> "We are saying to the employee, 'You have earned $100 this month, but all you get is $95. You must put $5 into the fund.' That is at the behest of union leaders. The employee has nothing to say about it. Certainly he is entitled to have us say that the fund shall be definite, that his rights shall be determined by law, and he shall be able to demand them." 93 Cong. Rec. 4876 (remarks of Sen. Taft, 1947), reprinted in 2 Leg. Hist. LMRA 1312 (1948).

For these very same reasons, this Court has held in NLRB v. Amax Coal Co., supra, that the principles which underlie review of collective bargaining do not apply to decisions with regard to setting the basic conditions of § 302 trusts. In Amax Coal, this Court rejected the Third Circuit's contentions that the "concerns of the union in the collective bargaining process . . . are legitimate . . . to the operation of § 302(c)(5)". Associated

Contractors of Essex County, Inc. v. Laborers Int. Union, 559 F.2d 222, 227 (3rd Cir. 1977). See Amax Coal Co. v. NLRB, 614 F.2d 872, 881-82 (3d Cir. 1980).

Speaking through Justice Stewart, the Court ruled 8-1 that the duty imposed by § 302(c)(5) "is directly antithetical to that of an agent of the appointed party." Amax Coal, supra, 101 S.Ct. at 2795. This Court, agreeing with plaintiffs herein, reiterated that Congress intended that the rules governing a § 302 trust must be reviewed under ficuciary standards which provide that the "duty to the trust beneficiaries must overcome any loyalty to the interest of the party that appointed him." Amax Coal, supra, 101 S.Ct. at 2796.

Therefore, the intent of Congress as confirmed by Amax Coal, was to remove review of decisions over the eligibility

conditions of § 302 trusts from the normal collective bargaining system. Rather than encouraging judicial review of collectively bargained eligibility conditions under normal collective bargaining principles, Congress enacted § 302(c)(5) to provide for a review of those rules under a different, but narrow test (i.e., the arbitrary and capricious standard). This test places the interests of the beneficiaries above those of the collective bargaining parties. Congress created this exception in order to remove these trusts from the danger of corruption. See Arroyo v. United States, 359 U.S. 419 (1959). The goal was, contrary to the contentions of the Trustees herein, to have decisions, no matter who made them, reviewed under the fiduciary duty standards of § 302(c)(5) and not under normal collective bargaining principles.

IV. CONGRESS DID NOT INTEND THAT ERISA'S SPECIFIC RULES BE THE ONLY FEDERALLY IMPOSED LIMITS ON ELIGIBILITY CONDITIONS.

Petitioners and their supporting amici have suggested that the only limits on benefit trust eligibility conditions adopted by Congress in the Employee Retirement Income Security Act of 1974 (hereafter ERISA), 29 U.S.C. § 1001 et seq., were the specific prohibitions set forth in 29 U.S.C. §§ 1052-1054. They suggest that Congress rejected general court review of eligibility conditions and removed the rules of health benefit funds, as opposed to pension funds, from any court scrutiny. See AFL-CIO Br., at 20.

Those arguments, particularly as discussed by the AFL-CIO, misconstrue the congressional intent behind ERISA and ignore ERISA's own fiduciary duty provisions, 29 U.S.C. § 1104. Contrary to the

defendants' arguments, ERISA reaffirmed Congress' continuing belief that benefit trusts because of their unique structure must be subject to court review under the same fiduciary duty principles set forth in § 302(c)(5).

First, Congress specifically chose not to affect the validity of § 302(c)(5) by ERISA. Despite the broad preemption principles embodied in ERISA and Congress' specific desire to repeal the Welfare and Pension Plan Disclosure Act, see 29 U.S.C. § 1031, Congress determined that all other federal laws should remain in effect.

> "Nothing in this subchapter should be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law." 29 U.S.C. § 1144(d).

In adopting this provision, Congress

was not only aware of the existence of § 302, but also of its import,

> "The Labor Management Relations Act, Sec. 302, provides the fundamental guidelines for the establishment and operation of pension funds administered jointly by an employer and a union." H. Rep. No. 93-533, 93d Cong., 1st Sess. (1973), reprinted in [1974] U.S. Code Cong. & Admin. News 4639-4642.

In fact, in the process of adopting ERISA, Congress reaffirmed its view that § 302 trusts have important characteristics that differ from common law trusts. Congress noted, for example, that "the typical employee benefit plan, covering hundreds or even thousands of participants is quite different from the testamentary trust both in purpose and in nature." H. Rep. No. 93-533, supra, [1974] U.S. Code Cong. & Admin. News 4650. Thus, "the principles of fiduciary conduct [in ERISA] are adopted from existing trust law, but with modifications

appropriate for employee benefit plans", id., at 4651. See also S. Rep. No. 93-127 93d Cong., 1st Sess. (1973), reprinted in [1974] U.S. Code Cong. & Admin. News 4838, 4864-4867.

Those principles of fiduciary duty enacted in "ERISA codified the strict fiduciary duty standards that a § 302(c)(5) trustee must meet." NLRB v. Amax Coal Co., supra, 101 S.Ct. at 2796. See ERISA, 29 U.S.C. § 1104(a)(1). Congress intended in ERISA to apply to all trusts the basic fiduciary duty concept that those designing benefit fund eligibility conditions must have paramount loyalty to the fund's beneficiaries, over and above any other parties. Id.

Thus, ERISA's fiduciary duty provision, 29 U.S.C. § 1104(a)(1), which mimic those in § 302(c)(5), reaffirms congressional intent to provide judicial review of the

rules governing trust funds under fiduciary duty principles (i.e., the arbitrary and capricious standard). These general obligations which allow courts to reach and correct arbitrary rules are especially important for health and welfare funds like that of defendants herein, since the specific standards imposed by other provisions of ERISA do not apply to such funds. ERISA's enactment did not, as defendants imply, retroactively create a legal vacuum for health and welfare funds; instead, it assured through § 1104(a)(1) that such funds' rules remained under court scrutiny.

V. EVEN IF COLLECTIVELY BARGAINED CONDITIONS CANNOT BE REACHED DIRECTLY BY § 302(c)(5), DEFENDANT TRUSTEES ARE UNDER AN OBLIGATION NOT TO APPLY ARBITRARY ELIGIBILITY CONDITIONS.

The thrust of the arguments of both defendants and their amici has been that

the eligibility conditions at issue are immune from review under § 302(c)(5) merely by the fact that they were adopted by the collective bargaining parties and not the trustees. Plaintiffs, as well as amicus National Black Lung Association, strongly reject that premise.

However, even if defendants' claim that the collective bargainers' actions cannot be reviewed under the arbitrary and capricious standard is accepted, that does not correspondingly immunize defendant trustees from § 302(c)(5) review. The trustees, as this Court repeatedly stated in Amax Coal, owe an independent duty to the funds' beneficiaries that cannot be colored by the interests involved in the collective bargaining procedure.

> "The atmosphere in which employee benefit fund fiduciaries must operate as mandated by § 302(c)(5) and ERISA is wholly inconsistent

> with this process of compromise and economic pressure [collective bargaining]". Amax Coal, supra, 101 S.Ct. at 2798.

Trustees have an independent duty to evaluate the eligibility conditions, that duty is not mitigated or altered by the fact that the rules were developed during the collective bargaining process.

> "[T]rustees have a duty to exercise their independent judgment in administering trust funds established under § 302 of the Labor Management Relations Act. Recommendations of collective bargaining parties may be adopted by the trustees in the exercise of their discretion but such recommendations are not binding or obligatory." Toensing v. Brown, 528 F.2d 69, 72(9th Cir. 1975).

Defendants have acknowledged that the eligibility condition before this court is arbitrary and capricious. Defendant trustees, under the fiduciary duty principles adopted by Congress in § 302(c)(5) and reiterated

by this Court in Amax Coal, may not enforce or apply such rules -- even if those rules were adopted by the collective bargaining parties. Thus, despite the enactment of arbitrary rules through collective bargaining, the decision of trustees to enforce those rules is still reviewable under the fiduciary duty standard of § 302(c)(5).

CONCLUSION

The decision of the Court of Appeals should be affirmed.

December, 1981.

Respectfully submitted,

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